

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

DR. DOROTHY NAIRNE, et al.

Plaintiffs,

v.

R. KYLE ARDOIN, in his official capacity as
Secretary of State of Louisiana,

Defendant.

CIVIL ACTION NO. 3:22-cv-00178
SDD-SDJ

Chief Judge Shelly D. Dick

Magistrate Judge Scott D. Johnson

PLAINTIFF'S SUPPLEMENTAL BRIEF IN OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

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Plaintiffs submit this supplemental brief in opposition to Defendants’ Motion for Summary Judgment pursuant to this Court’s order dated November 6, 2023. ECF No. 170. Plaintiffs challenge the redistricting plans for the Louisiana House of Representatives and Louisiana Senate because they dilute the voting strength of Black voters, in violation of Section 2 of the Voting Rights Act of 1965 (“VRA”), 52 U.S.C. § 10301. Defendants claim that Plaintiff Louisiana State Conference of the National Association for the Advancement of Colored People (“Louisiana NAACP”) lacks standing to raise this critical challenge and seek dismissal on that ground. For the reasons set forth below, Defendants’ motion is meritless and should be denied.

I. FACTUAL BACKGROUND

As explained in Plaintiffs’ Opposition to Defendants’ Motion for Summary Judgment, the NAACP has already proffered sufficient evidence of at least one identified member in each area of the state where Plaintiffs seek an additional majority-Black district who would have standing in their own right. ECF No. 163 at 12-15. In addition to the evidence cited in the Opposition, pursuant to an order of this Court compelling discovery, ECF No. 169, Plaintiff has now identified by name ten members of the Louisiana NAACP each of whom currently resides in a Louisiana Senate or House District that dilutes their vote.¹ Each of these members would reside in a newly created majority-Black district in Plaintiffs’ expert Bill Cooper’s June 2023 illustrative plans. *See* Plaintiff Louisiana NAACP’s Second Supplemental Responses to Defendant Ardoin’s First Set of Interrogatories to Organizational Plaintiffs (“Supplemental Response”), attached as Exhibit 1.²

¹ Although Plaintiffs seek the creation of a total of nine additional majority-Black districts, including two House districts in the Baton Rouge area, the Illustrative Plan removes an existing Baton Rouge area majority-Black districts (HD 62) and reconfigures the others to create three new majority-Black districts (HD 65, 68, and 69) for a net addition of two. The Supplemental Response includes a member in each of the three new majority-Black districts.

² The facts described here are evidenced by the Supplemental Response to Defendant Ardoin’s Interrogatory No. 3, which was the subject of Defendant’s Motion to Compel. That response identifies ten specific members by name and address. Pursuant to the Protective Order entered by the court on September 14, 2023, ECF No. 138, and Fed. R. Civ. P. 5.2, Plaintiffs have attached to this briefing a copy of the Louisiana NAACP’s Supplemental Response, with the personally identifying information of Louisiana NAACP members redacted. If the Court desires, Plaintiff will file an unredacted copy of the Supplemental Response under seal or present it to the Court for *in camera* review.

II. ARGUMENT

A. The Louisiana NAACP's Production of Member Information After the Close of Discovery Was Justified.

Defendants' argument that Plaintiff's compliance with the court order is untimely and prejudicial defies logic. After months of pursuing discovery into the constitutionally protected personally identifying information of the Louisiana NAACP's members, including letters asserting that Plaintiff's responses were insufficient, a motion to compel, an appeal to this Court of the denial of that motion, and what amounted to an oral argument on reconsideration, Defendants now assert that they do not want the information Plaintiff has produced and that it was improper for Plaintiff to produce it. Defendants do not argue that Plaintiff failed to produce the information by the court-ordered deadline. Indeed, Plaintiff's disclosure is plainly timely. On November 2, 2023, this Court "ORDER[ED] the Louisiana NAACP to supplement its Answer to Interrogatory No. 3 by providing both the name and address of the individual member(s) from the challenged districts that the NAACP intends to offer at trial to establish associational standing, or any other part of its claim" by November 6, 2023. ECF No. 169. Plaintiff promptly complied with the court's order.

In reality, Defendants' claim of prejudice is simply another attempt to delay the trial, premised on a purported need to reopen discovery for an unspecified period of time to conduct vaguely specified discovery—discovery they never sought from the named Individual Plaintiffs but now claim to need from the NAACP's members, despite the fact that "[p]articipation of individual members generally is not required when the association seeks prospective or injunctive relief, as opposed to damages." *Consumer Data Indus. Ass'n v. Texas*, No. 21–51038, 2023 WL 4744918, at *4 n.7 (5th Cir. 2023). Defendants' request to reopen discovery and their demand to continue the trial is not only wrong; it is improper in a supplemental brief on a motion for summary judgment. *See* Fed. R. Civ. P. 7(b) ("A request for a court order must be made by motion").

B. The Louisiana NAACP Has Associational Standing.

As Defendants acknowledge, an organization possesses associational standing to assert claims on behalf of its members if the organization satisfies three requirements: “(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977). As explained in Plaintiffs’ Opposition Brief, the evidence proffered by the Louisiana NAACP even prior to the supplemental discovery response establishes that it has specific, identified members who would have standing in their own right.

The Supplemental Response provides additional evidence of the existence of members who would have standing in their own right by suffering the injury-in-fact of their votes being diluted in the district where they live. “Dilution of racial minority group voting strength may be caused by the dispersal of blacks into districts in which they constitute an ineffective minority of voters or from the concentration of blacks into districts where they constitute an excessive majority.” *Thornburg v. Gingles*, 478 U.S. 30, 46 n.11 (1986) (citation omitted); *see also Harding v. Cnty. of Dallas*, 948 F.3d 302, 307 (5th Cir. 2020) (standing to challenge districting plan under Section 2 established where “each voter resides in a district where their vote has been cracked or packed”). Here, eight of the individuals identified in the Supplemental Response (those residing in HD 1, 25, 60, 65, and 68, and in SD 8, 17, and 38) reside in districts in which the Black population has been “cracked” by being dispersed “into districts in which they constitute an ineffective minority,” while two (those residing in HD 34 and 101) reside in districts in which the Black population has been “packed” by being “concentrat[ed] into districts where they constitute an excessive majority.” *See Gingles*, 478 U.S. at 46 n.11. Either form of dilution is an injury sufficient to establish standing. *Harding*, 948 F.3d at 307. Moreover, even under Defendants’ expansive reading of *Summers v.*

Earth Island Inst. (which Plaintiffs note cannot be sustained in light of *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254 (2015)), this evidence is sufficient to establish the Louisiana NAACP's associational standing. *See Summers*, 555 U.S. 488, 498 (2009).

Defendants, citing *Gill v. Whitford*, 138 S. Ct. 1916 (2018), contend that voters who reside in districts that are packed cannot establish standing because they are already able to elect candidates of their choosing. *See* ECF 149-1 at 17-18; ECF No. 172 at 5. Contrary to Defendants' argument, however, *Gill* recognizes that the harm of vote dilution occurs when the configuration of the plaintiff's district "causes his vote—*having been packed or cracked*—to carry less weight than it would carry in another, hypothetical district." 138 S. Ct. at 1931 (emphasis added). Moreover, *Gill* was a partisan gerrymandering case, and even if it supported Defendants' position (which it does not), it could not overcome *Gingles* itself and the many subsequent Section 2 cases that recognize the harm of concentrating minority voters into districts that dilute their votes. In making this argument, Defendants concede that the eight members living in cracked districts who could be drawn into a new majority-Black district would have standing in their own right. *See* ECF 149-1 at 17-18; ECF No. 172 at 5 (arguing only that three members—including Plaintiff Dorothy Nairne who was not among the 10 members included in the Supplemental Response—lack standing in their own right because they currently live in majority-Black districts). Instead, they argue that these members cannot secure all of the relief Plaintiffs seek. Misconstruing the evidentiary record and misapplying the law, Defendants contend that the Louisiana NAACP has not identified members in all the districts Plaintiffs challenge. First, they misconstrue the Louisiana NAACP's prior responses to Interrogatory No. 3 as somehow a concession that it must have members in every district listed there. ECF No. 172 at 4. But Plaintiff has consistently maintained

that the list of districts was broader than the districts in which it must establish standing. *E.g.*, ECF No. 163-1 at 4-5.

Second, Defendants argue that Section 2 plaintiffs can seek to alter the boundaries of only the specific districts in which they live, but they fail to cite a Section 2 case that supports such a notion. Instead, they once again rely on gerrymandering cases. ECF No. 172 at 4-5 (citing *Gill* and *North Carolina v. Covington*, 138 S. Ct. 2548, 2553 (2018)). The only Section 2 case they cite, *Petteway v. Galveston Cnty.*, supports Plaintiffs. 2023 WL 2782704, at *5 (S.D. Tex. Mar. 30, 2023). In *Petteway*, the court held that a plaintiff lacked standing where the plaintiffs had not even alleged, much less offered, evidence that the individual could be drawn into a new, reasonably compact majority-minority district. *Id.* Here, Plaintiffs have alleged that new districts can be drawn in the areas of the state in which they challenge the Enacted Maps and they have proffered an Illustrative Plan in which each of the identified members who presently resides in a dilutive district would reside in a new majority-minority district. That is sufficient to establish Section 2 standing. Moreover, even if Defendants were correct as a legal matter that the potential remedies Plaintiffs are entitled to seek is limited based on the number of members they have identified, which they are not, that would be relevant only at the remedial stage and would not provide a basis for summary judgment on standing grounds. *Funeral Consumers All., Inc. v. Serv. Corp. Int'l*, 695 F.3d 330, 343-44 (5th Cir. 2012) (requiring only that the plaintiff organization prove it has “at least one member with standing to present, in his or her own right, the claim (or the type of claim) pleaded by the association”) (cleaned up).

III. CONCLUSION

For the reasons stated above, the Louisiana NAACP has associational standing to challenge the packing and cracking of Black voters in these areas through the residence of its members, who are voters who could be drawn into new non-dilutive majority-Black house or senate districts.

DATED: November 7, 2023

Respectfully submitted,

John Adcock (La. Bar No. 30372)
Adcock Law LLC
Louisiana Bar No. 30372
3110 Canal Street
New Orleans, LA 70119
jnadcock@gmail.com

Ron Wilson (La. Bar No. 13575)
701 Poydras Street, Suite 4100
New Orleans, LA 70139
cabral2@aol.com

Nora Ahmed (N.Y. Bar. No. 5092374)
ACLU Foundation of Louisiana
1340 Poydras St., Suite 2160
New Orleans, LA 70112
NAhmed@laaclu.org

Sarah Brannon*
Megan C. Keenan**
American Civil Liberties Union Foundation
915 15th St. NW
Washington, DC 20005
sbrannon@aclu.org
mkeenana@aclu.org

Michael de Leeuw*
Amanda Giglio*
Cozen O'Connor
3 WTC, 175 Greenwich St.,
55th Floor
New York, NY 10007
MdeLeeuw@cozen.com
AGiglio@cozen.com

Josephine Bahn**
Cozen O'Connor
1200 19th Street NW
Washington, D.C. 20036
JBahn@cozen.com

/s/ I. Sara Rohani

I. Sara Rohani*
NAACP Legal Defense & Educational Fund
700 14th Street, Suite 600
Washington, DC 20005
srohani@naacpldf.org

Leah Aden*
Stuart Naifeh*
Victoria Wenger*
NAACP Legal Defense & Educational Fund
40 Rector Street, 5th Floor
New York, NY 10006
laden@naacpldf.org
snaifeh@naacpldf.org
vwenger@naacpldf.org

Sophia Lin Lakin*
Dayton Campbell-Harris**
Luis Manuel Rico Román**
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
slakin@aclu.org
dcampbell-harris@aclu.org
lroman@aclu.org

T. Alora Thomas-Lundborg*
Election Law Clinic
Harvard Law School
6 Everett Street, Ste. 4105
Cambridge, MA 02138
tthomaslundborg@law.harvard.edu

Attorneys for Plaintiffs

*Admitted Pro Hac Vice

**Pro Hac Vice Motion Forthcoming

CERTIFICATE OF SERVICE

I certify that on November 7, 2023 this document was filed electronically on the Court's electronic case filing system. Notice of the filing will be served on all counsel of record through the Court's system.

/s/ I. Sara Rohani

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**PLAINTIFF NAACP LOUISIANA STATE CONFERENCE'S SECOND
SUPPLEMENTAL RESPONSES & OBJECTIONS TO DEFENDANT ARDOIN'S FIRST
SET OF INTERROGATORIES AND FIRST SET OF REQUESTS FOR PRODUCTION
OF DOCUMENTS TO THE ORGANIZATIONAL PLAINTIFFS**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, and Local Rules 26.1 and 33.1, the NAACP Louisiana State Conference ("Louisiana NAACP"), by and through its undersigned counsel, hereby submit these supplemental responses and objections (together as "Supplemental Responses") to interrogatories set forth in Defendant Kyle Ardoin, in his official capacity as Louisiana Secretary of State ("Defendant Ardoin"), First Set of Interrogatories, dated July 22, 2022, without waiving any defenses that Plaintiff Louisiana NAACP has or hereafter may assert in the above-captioned action.

INTERROGATORY NO. 3

As to each Louisiana State House and State Senate District at issue in the Complaint, and for each Organizational Plaintiff, state the following identifying to which district the response relates:

- (a) *Identify the members of your organization living in each challenged district;*
- (b) *For your organization, list events, presentations, or other programs that the Organizational Plaintiff has held in each challenged district since*

January 2008;

- (c) *Identify all facts and all documents on which you intend to rely to support your organization's standing with respect to each challenged district; and*
- (d) *Identify and produce any and all communications between your organization and its members in each challenged district.*

SECOND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 3

Subject to and without waiving the general and specific objections to Interrogatory No. 3 asserted in Plaintiff NAACP Louisiana State Conference's Responses & Objections to Defendant Ardoin's First Set of Interrogatories and First Set of Requests for Production of Documents to the Organizational Plaintiffs and Plaintiff NAACP Louisiana State Conference's Supplemental Responses & Objections to Defendant Ardoin's First Set of Interrogatories to the Organizational Plaintiffs, Plaintiff responds as follows:

Plaintiff has reviewed membership information in conjunction with the enacted House and Senate maps and the June 2023 Illustrative House and Senate maps created by Plaintiff's expert witness, Mr. Bill Cooper. Plaintiff has identified at least one member in each part of the state in which districts dilute Black voting strength (that is, "pack" or "crack" Black voters) who could be drawn into a new majority-Black district that could be created in that area, as demonstrated by Mr. Cooper's Illustrative Plans.

Specifically, the following members of the Louisiana NAACP have consented to waive their associational privilege and disclose their names and addresses.

- a. [REDACTED], who is Black and a registered voter, resides at [REDACTED]
[REDACTED]. [REDACTED] lives in Enacted House District 1. Enacted House District 1 is in the Caddo/Bossier area where Black voters are packed into few majority-Black House districts and cracked across others, and where an additional majority-Black district could be created, as demonstrated by Illustrative House District 1. [REDACTED]

would reside within the boundaries of Illustrative House District 1 in Mr. Cooper's June 2023 illustrative House plan. [REDACTED] is a member of the Shreveport Branch of the Louisiana NAACP.

- b. [REDACTED], who is Black and a registered voter, resides at [REDACTED]. [REDACTED] lives in Enacted House District 25. Enacted House District 25 is in the DeSoto/Natchitoches/Red River area where Black voters are packed into few majority-Black House districts and cracked across others, and where an additional majority-Black district could be created, as demonstrated by Illustrative House District 23. [REDACTED] would reside within the boundaries of Illustrative House District 23 in Mr. Cooper's June 2023 illustrative House plan. [REDACTED] is a member of the Natchitoches Branch of the Louisiana NAACP.

- c. [REDACTED], who is Black and a registered voter, resides at [REDACTED]. [REDACTED] lives in Enacted House District 34. Enacted House District 34 is in the Lake Charles area, where Black voters are packed into one majority-Black House district and cracked across others, and where an additional majority-Black district could be created, as demonstrated by Illustrative House District 38. [REDACTED] would reside within the boundaries of Illustrative House District 38 in Mr. Cooper's June 2023 illustrative House plan. [REDACTED] is a member of the Lake Charles Branch of the Louisiana NAACP.

- d. [REDACTED], who is Black and a registered voter, resides at [REDACTED]. [REDACTED] lives in Enacted House District 60. Enacted House District 60 is in the Iberville/Ascension area, where Black voters are packed into few majority-Black House districts and cracked across others, and where an additional

majority-Black district could be created, as demonstrated by Illustrative House District 60.

██████████ would reside within the boundaries of Illustrative House District 60 in Mr. Cooper's June 2023 illustrative House plan. ██████████ is a member of the Ascension Branch of the Louisiana NAACP.

- e. ██████████, who is Black and a registered voter, resides at ██████████
██████████. ██████████ lives in Enacted House District 65. Enacted House District 65 is in the East Baton Rouge area, where Black voters are packed into few majority-Black House districts and cracked across others, and where additional majority-Black districts could be created, as demonstrated by Illustrative House Districts 65, 68, and 69. ██████████ would reside within the boundaries of Illustrative House District 65 in Mr. Cooper's June 2023 illustrative plan. ██████████ is a member of the Baton Rouge Branch of the Louisiana NAACP.

- f. ██████████, who is Black and a registered voter, resides at ██████████
██████████. ██████████ lives in Enacted House District 68. Enacted House District 68 is in the East Baton Rouge area, where Black voters are packed into few majority-Black House districts and cracked across others, and where additional majority-Black districts could be created, as demonstrated by Illustrative House Districts 65, 68, and 69. ██████████
██████████ would reside within the boundaries of Illustrative House District 68 in Mr. Cooper's June 2023 illustrative plan. ██████████ is a member of the Baton Rouge Branch of the Louisiana NAACP.

- g. ██████████, who is Black and a registered voter, resides at ██████████
██████████. ██████████ lives in Enacted House District 101. Enacted House District 101 is in the East Baton Rouge area, where Black voters are packed into

few majority-Black House districts and cracked across others, and where additional majority-Black districts could be created, as demonstrated by Illustrative House Districts 65, 68, and 69. [REDACTED] would reside within the boundaries of Illustrative House District 69 in Mr. Cooper's June 2023 illustrative House plan. [REDACTED] is a member of the Baton Rouge Branch of the Louisiana NAACP.

h. [REDACTED], who is Black and a registered voter, resides at [REDACTED] [REDACTED]. [REDACTED] lives in Enacted Senate District 17. Enacted Senate District 17 is in the East Baton Rouge/Iberville/Pointe Coupee/West Baton area, where Black voters are packed into few majority-Black Senate districts and cracked across others, and where an additional majority-Black district could be created, as demonstrated by Illustrative Senate District 17. [REDACTED] would reside within the boundaries of Illustrative Senate District 17 in Mr. Cooper's June 2023 illustrative plan. [REDACTED] is a member of the New Roads/Point Coupee Branch of the Louisiana NAACP.

i. [REDACTED], who is Black and a registered voter, resides at [REDACTED] [REDACTED]. [REDACTED] lives in Enacted Senate District 8. Enacted Senate District 8 is in the Jefferson/St. Charles area, where there are no majority-Black Senate districts and Black voters are cracked across several districts, and where an additional majority-Black district could be created, as demonstrated by Illustrative Senate District 19. [REDACTED] would reside within the boundaries of Illustrative Senate District 19 in Mr. Cooper's June 2023 illustrative plan. [REDACTED] is a member of the Jefferson Branch of the Louisiana NAACP.

j. [REDACTED], who is Black and a registered voter, resides at [REDACTED] [REDACTED]. [REDACTED] lives in Enacted Senate District 38. Enacted Senate District is in the Caddo/Bossier area, where Black voters are packed into one majority-

Black Senate district and cracked across others, and where an additional majority-Black district could be created, as demonstrated by Illustrative Senate District 38. [REDACTED] would reside within the boundaries of Illustrative Senate District 38 in Mr. Cooper's June 2023 illustrative plan. [REDACTED] is a member of the Shreveport Branch of the Louisiana NAACP.

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DATED: November 6, 2023

Respectfully submitted,

John Adcock (La. Bar No. 30372)
Adcock Law LLC
Louisiana Bar No. 30372
3110 Canal Street
New Orleans, LA 70119
jnadcock@gmail.com

/s/ I. Sara Rohani
I. Sara Rohani*
NAACP Legal Defense & Educational Fund
700 14th Street, Suite 600
Washington, DC 20005
srohani@naacpldf.org

Ron Wilson (La. Bar No. 13575)
701 Poydras Street, Suite 4100
New Orleans, LA 70139
cabral2@aol.com

Leah Aden*
Stuart Naifeh*
Victoria Wenger*
NAACP Legal Defense & Educational Fund
40 Rector Street, 5th Floor
New York, NY 10006
laden@naacpldf.org
snaifeh@naacpldf.org
vwenger@naacpldf.org

Nora Ahmed (N.Y. Bar. No. 5092374)
ACLU Foundation of Louisiana
1340 Poydras St., Suite 2160
New Orleans, LA 70112
NAhmed@laaclu.org

Sophia Lin Lakin*
Dayton Campbell-Harris**
Luis Manuel Rico Román**
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
slakin@aclu.org
dcampbell-harris@aclu.org
lroman@aclu.org

Sarah Brannon*
Megan C. Keenan**
American Civil Liberties Union Foundation
915 15th St. NW
Washington, DC 20005
sbrannon@aclu.org
mkeenana@aclu.org

Michael de Leeuw*
Amanda Giglio*
Cozen O'Connor
3 WTC, 175 Greenwich St.,
55th Floor
New York, NY 10007
MdeLeeuw@cozen.com
AGiglio@cozen.com

T. Alora Thomas-Lundborg*
Election Law Clinic
Harvard Law School
6 Everett Street, Ste. 4105
Cambridge, MA 02138
tthomaslundborg@law.harvard.edu

Josephine Bahn**
Cozen O'Connor
1200 19th Street NW
Washington, D.C. 20036
JBahn@cozen.com

Attorneys for Plaintiffs
*Admitted Pro Hac Vice
**Pro Hac Vice Motion Forthcoming

VERIFICATION OF MICHAEL MCCLANAHAN

I hereby state that the Louisiana NAACP's Supplemental Responses to Defendant Ardoin's First Set of Interrogatories and First Set of Requests for Production of Documents served on September 1, 2023, are true to the best of my knowledge and belief.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 6, 2023:

A handwritten signature in black ink, appearing to read 'Michael McClanahan', written over a horizontal line.

Michael McClanahan

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